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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ALBERT WALTER TROMBETTA, ET AL.,

Respondents.

REPLY TO RESPONDENTS' BRIEF
OPPOSING CERTIORARI

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I

THE REPLY CONTAINS SEVERAL
FACTUAL INACCURACIES

In the first two paragraphs of page
6 of their brief, respondents claim that
the "facts" establish that the Omicron

Intoxilyzer is inaccurate, the gas chromatograph a superior instrument, and adverts to instrument utilization in several California counties. There were no factual findings as to any of these "facts."

The Intoxilyzer has been approved as an accurate device for evidential breath testing in California. (See People v. Miller (1975) 52 Cal.App.3d 666, 670, 125 Cal.Rptr. 341, 343.) The alleged greater specificity of the gas chromatograph has been judicially rejected as a basis for discounting the accuracy of the Intoxilyzer. (See Intoximeters, Inc. v. Younger (1975) 53 Cal.App.3d 262, 269-270, 125 Cal.Rptr. 864, 869-870.) Currently the Intoxilyzer represents 82% of the breath instruments being used in California, as contrasted with the 14% which are gas chromatographs.

II

THERE IS NO DEVICE APPROVED IN CALIFORNIA FOR REFEREE ANALYSIS.

In their statement of facts (pp. 4-6), respondents make much of the "indium tube," a remote sample capturing device limited to use with the gas chromatograph intoximeter. This is a red herring.

Use of the indium tube is limited to subsequent analysis with the Intoximeter brand gas chromatograph, for which it is an accessory. (See Department of Health Services, List of Approved Instruments and Related Accessories Approved for Breath Alcohol Analysis (December 20, 1979) pp. 6-7, 12.) It is not approved for use with any other testing device, including a competing brand of gas chromatograph. (Id., at pp. 1-5, 8-11.)

The indium tube was never designed or approved as an instrument for referee

analysis. "Referee analysis" is analysis of a sample collected and retained for the purpose of permitting a third-party referee to validate the accuracy of the initial breath-alcohol test. Referee analysis seems to be the retention envisioned by the California Court of Appeal in Trombetta.

The indium tube was designed and approved solely for the limited purpose of remote collection for subsequent analysis, and arose out of the problem posed by the necessity of collecting a sample in a rural area far removed from breath-alcohol testing devices. It is use in but a single California county. Due to the inherent limitations of such a sample, it is simply not suitable for referee analysis, although courts (and defense counsel) frequently confuse the two separate items.

The limited nature of the device's approval was discussed in the California

Department of Health "Ad Hoc Committee." The danger of confusing apples with oranges prompted the full California breath-alcohol Advisory Committee to recommend no further use of the device. Rather than attempt to paraphrase or quote the discussion of the issue, we are printing appropriate passage from the Advisory Committee report (Appendix A) and from the "Ad Hoc" report (Appendix B).^{1/}

1. Defense counsel finds sinister purpose in the inclusion of the People's attorney here (Mr. Kirk) among the members of the Ad Hoc Committee on Breath Testing, Advisory Committee on Alcohol Determination (Response, p. 19). However hats that public employee may wear, he is not and never has been a member of the Advisory Committee itself, whose varied membership is established by statute (Calif. Health & Saf. Code, § 436.50), which itself adopted these portions of the Ad Hoc Committee report, and which includes among its members, for example, Mr. Richard Erwin, a public defender and author of Defense of Drunk Driving Cases, now in its third edition.

The indium tube is a red herring. It was approved for a limited purpose, limited to one brand of instrument, and has almost no use in California. It is not a device which will permit the prosecution to retain a breath sample analyzed for evidential purpose for later retesting by the defendant. As the Municipal Court held below, that simply cannot be done. This Court should not lose sight of the real issue: whether a due process preservation requirement forbids use of a breath testing machine which automatically expels and thus destroys the breath sample during the test process.

III

THERE IS ALREADY A STATUTORY AVENUE
AVAILABLE FOR DEFENSE SAMPLE COLLECTION.

Respondents dispute the adequacy of California's express statutory requirement that a defendant be given an opportunity to collect his own test sample on the ground that this right is illusory since

many hours may go by before the sample can be collected (Response, pp. 13-14). Respondents ignore the judicial gloss which assures constitutional lustre.

If officers improperly prevent the defendant from obtaining his own sample in a timely manner, then evidence of any alcohol test taken by or for the police will be suppressed. (Brown v. Municipal Court (1978) 86 Cal.App.3d 357, 363-365, 150 Cal.Rptr. 216, 220-222.) Since alcohol is quickly excreted from the body, the same principle requiring a prompt test or sample collection for law enforcement purposes applies to a sample or test for defense purposes. (Id., 86 Cal.App.3d at 362, 150 Cal.Rptr. at 220.) Once testing for law enforcement is completed, if the defendant has requested his own test by his own expert, he must at least be given an opportunity to make arrangements for it,

such as a phone call. (In re Martin (1962) 58 Cal.2d 509, 511-512, 24 Cal.Rptr. 833, 834; In re Koehne (1960) 54 Cal.2d 757, 760, 8 Cal.Rptr. 435, 435; McCormick v. Municipal Court (1961) 195 Cal.App.2d 819, 821-824, 16 Cal.Rptr. 211, 215.) If facilities for sample collection are readily available locally, then officers must take the defendant to them once he has made those arrangements. (See In re Howard (1962) 208 Cal.App.2d 709, 711, 716, 25 Cal.Rptr. 590, 591, 594.) If the defendant is already someplace like a hospital where he can have his own sample taken, then the officer cannot interfere with his request to have his own sample. (Brown v. Municipal Court, supra, 86 Cal.App.3d at 360, 362, 365, 150 Cal.Rptr. at 219, 220, 222.)

Officers cannot hamper or interfere with the defendant's reasonable efforts to

timely obtain his own sample. (In re Martin, supra, 58 Cal.2d at 512, 24 Cal.Rptr. at 835.)

IV

EMERGENCY LEGISLATION HAS NOT
"SOLVED" THE PROBLEM.

Adverting to the new California Vehicle Code section 13353.5, respondents seem to suggest that the Trombetta problem has been "solved." (Response, pp. 21-22.) That is not correct. There has been absolutely no judicial construction of the statute, which was suggested only in a concurring opinion in Trombetta.^{2/} Whether the California courts will find the legislative remedy adequate to the constitutional purpose

2. In our Petition, we noted that the Court of Appeal stayed the remittitur of its Trombetta decision until August 30, 1983. This stay has now been made indefinite pending resolution of this petition.

is unknown. But if there is no constitutional duty to preserve a breath sample for the defense or with an instrument which automatically expels a sample only temporarily collected, then the issue will never arise.

[illegible]

CONCLUSION

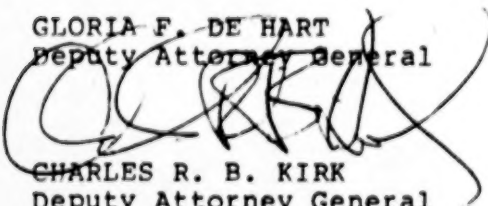
Petitioner respectfully requests this Court to grant certiorari to review this significant federal issue and provide a clear exposition of the standard which should guide the various state courts.

DATED: January 4, 1984

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APPENDIX A

Excerpt from Advisory Committee
on
Alcohol Determination,
Notes of Meeting,
December 14, 1982
(pages 12-15, 16-17)

The Advisory Committee next discussed the second item on its agenda: the remote collection of breath samples for later analysis. The Ad Hoc Committee's "Notes of Meeting: August 31, 1982" constituted the basis of the Advisory Committee's discussions of this agenda item. The recommendations of the Ad Hoc Committee to the Advisory Committee are shown as follows:

1. A deletion from the regulations of the provisions for remote collection of breath alcohol samples for later analysis;

2. The retention, in a "grandfather clause", of the ability of San Bernardino County to continue its presently approved use of the field crimper-indium tube system in its geographically remote stations;

3. An affirmative declaration in the regulations that there is no

scientific need or reason to retain breath samples for referee analysis;

4. A recognition that the retention of a breath sample for referee analysis, in addition to being scientifically unnecessary, can produce confusion inasmuch as the two tests, the immediate analysis and the referee analysis, are not equivalent; and

5. The need to develop new regulations specific for retention of breath samples for referee analysis if it should happen that the courts should rule that breath samples must be retained, even though the scientific need for reason for this does not exist.

The Ad Hoc Committee had also concluded that there is presently no reliable and practical way to retain a breath sample for referee analysis

inasmuch as there is no sample capturing device which can meet performance standards with respect to: air blank, calibration with a standard solution, and quality control with a reference sample.

Details concerning these recommendations are contained in the Ad Hoc Committee's "Notes of Meeting" August 31, 1982" (see Attachment, Pages 23 through 36).

The Advisory committee's discussion of the Ad Hoc Committee's recommendations first established that adoption of recommendation Number 1 will not affect an arrested person's continuing to have a choice of a blood, breath or urine test. Furthermore, deletion of remote collection of breath samples for later analysis will have no practical significance on the availability of breath tests themselves since only one

county makes any use of remote collection. Information presented at this meeting showed that even in that county (San Bernardino), the use of remote collection is minimal and would easily be replaced in that county with an instrument at the single remote site which remains. Therefore, recommendation Number 2 is not needed.

The Advisory Committee adopted recommendation Number 1. In doing this, the Advisory Committee made it clear that it was not disapproving the ability of the field crimper-indium tube system to function for the purpose of remote collection (the purpose for which it was evaluated and approved in California), but was taking the position that remote collection systems are not needed in California. Therefore, no reason exists to maintain the provisions for remote collection in the regulations, and no

reason exists for thereby continuing the State's responsibility for review and approval of remote collection systems. As long as the provisions for remote collection remain in the regulations, the State is obligated to review and test as many systems for remote collection as manufacturers devise. Also, as long as the provisions for remote collection remain in the regulations, there remains the opportunity for confusing remote collection with a totally different application, such as referee analysis. The Advisory Committee was emphatic in its conclusion that, for the reasons stated in the Ad Hoc Committee's report, remote collection is not a scientifically valid check of a breath testing instrument. Remote collection is simply another method for doing breath testing but it has its own inherent problems, which can only add

error to any attempt to use remote collection to check a breath testing instrument.

Therefore, the Advisory Committee adopted the recommendation that the provisions for remote collection of breath-alcohol samples for later analysis be deleted from the regulations. This action is consistent with other actions underway in all state agencies to rework regulations in order to remove provisions which have become obsolete and unnecessary.

The Advisory Committee discussed the effect of this action if there should be a court decision favoring the retention of breath samples for referee analysis. The Advisory Committee reaffirmed its conclusion that, in such a case, the provisions presently in Title 17 regulations relating to remote collection would be inadequate for referee analysis. There

would have to be action which is consistent with recommendation Number 5. New regulations setting performance standards for referee analysis would have to be established. Even then, it is questionable whether the regulations can govern referee analysis performed by or for the defense. Sections 436.51 and 436.52 of the statute in the Health and Safety Code restrict the regulations to "testing by or for law enforcement agencies"

The Advisory Committee reviewed in detail the statement in the report of the AD Hoc Committee that there is no scientific need or reason to retain breath samples for referee analysis. The basis for this conclusion is presented in detail in the Ad Hoc Committee's "Notes of Meeting: August 31, 1982" wherein the scientific characteristics of blood (and urine)

analysis, "immediate analysis" of breath samples, and "later analysis" of remotely collected breath samples were compared and contrasted. The "Notes" also presented the manner in which the regulations complement the scientific characteristics. The Advisory Committee affirmed and accepted the conclusion reached by the Ad Hoc Committee that the procedures for "immediate analysis" of breath samples required by the California regulations leave no room for undetected error because of the scientific confidence derived from these procedures. In making this statement, the Advisory Committee recognized that instruments are indeed subject to failure, but that the consequence of the procedures required by California is that any such instrumental error will be discovered. Therefore, there exists no reasonable cause to

postulate that an erroneous instrument will be detected.

Even if a satisfactory device for capturing and analyzing a referee breath sample were developed, there would still be no scientific reason to use it in California, especially when all the additional costs are considered. For reasons stated in the "Notes of Meeting: August 31, 1982", a discrepancy between the test result of an immediate analysis and the test result of referee analysis on a captured sample could have nothing to do with the accuracy of the instrument used for the immediate analysis, and there is no way to go back to verify the accuracy of the referee analysis. On the other hand, the accuracy of the instrument used for immediate analysis can be verified at any time by the procedures used in California. If there is reason to believe that an instrument

is faulty, the accuracy records for that instrument is faulty, the accuracy records for that instrument can be obtained, the instrument itself can be checked again with Simulator solutions and with correlation tests, and records can be examined to determine what actions an agency took if a periodic determination of accuracy indicated instrument error.

APPENDIX B

Ad Hoc Committee on Breath Testing,
Advisory Committee on Alcohol
Determination, Department of Health
Services, Notes of Meeting, August 31,
1982 (pages 26-27, 29-36)

The Ad Hoc Committee reviewed the history and the reasons behind the amendments in 1975 which resulted in the introduction to the regulations of the foregoing provisions relating to remote capture of breath alcohol samples for later analysis. The scenario that was originally presented to the Department and to the Advisory Committee on Alcohol Determination which led to the addition of remote sample capture to the regulations envisioned, as an example, some location in the State which was some fifty miles from a breath testing instrument. An officer making an arrest for drunk driving in this setting would be faced with the problem of having to drive the arrested person fifty miles to a location where a breath testing instrument was installed in order to perform a usual "immediate analysis", creating additional problems such as

beat coverage, custodial care in transport, and diminution of blood-alcohol level. This type of scenario led to the proposal that there was a need to have another type of breath alcohol analysis; namely, the remote capture of breath alcohol samples for later analysis. The two test systems in which law enforcement was interested were the field crimper-indium tube system (manufacturer: Intoximeters, Inc.) and the SM-7 silica gel tube system (manufacturer: Luckey Laboratories, Inc.). Remote sample collection and later analyses can be illustrated with the field crimper-indium tube system. With this system, an officer would have the ability to collect a person's breath sample at the site of arrest. The officer would remove the field crimper from the trunk of his vehicle and plug it into the

cigarette lighter to bring the field crimper from the trunk of his vehicle and plug it into the cigarette lighter to bring the field crimper up to its operating temperature of 50 degrees Centigrade (122 degrees Fahrenheit). This temperature was selected by the manufacturer in order to encompass the range of temperatures which could exist in a vehicle's trunk, including the summer months. Next, the officer would position the indium tube in the crimper and have the person provide the breath sample. When the officer judged that the person provided the alveolar breath sample, the officer's squeezing of the handle of the field crimper would divide the indium tube into three individually sealed capsules, each containing a portion of the person's expired breath sample. The officer would then place the indium tube, which now contained the

encapsulated, remotely collected breath samples, into its box and mail it to a forensic alcohol laboratory for later analysis. The 14-day stability requirement was established relative to this use. This was considered sufficient time for the remotely collected breath sample to have been mailed to a forensic alcohol laboratory, to have been received at the laboratory and to have been tested at the laboratory.

Additionally, the Advisory Committee on Alcohol Determination concluded that the later analysis of the remotely collected breath sample was very different from the immediate analysis of a breath sample where the subject expires directly into the instrument which performs the immediate analysis. In the case of samples collected remotely, their later analysis is

subject to many manipulations including separating the breath sample from the capturing system and transporting it into the machine which does the actual analysis. Therefore, the regulations require that later analysis of remotely collected breath samples be subject to the more stringent procedures of Article 6 for forensic alcohol analysis.

The Ad Hoc Committee next considered a series of other issues related to the capture of breath alcohol samples for later analysis. These issues are summarized in the following statements:

1. The concept of remote collection of samples has been confused with the concept of breath sample retention for referee analysis.
2. There is no scientific need to retain a breath sample for referee analysis.

3. There is no reliable and practical way to retain a breath sample for referee analysis inasmuch as there is no breath sample capturing device which can meet the performance standards with regard to: air blank, calibration with a standard solution; quality control with a reference sample.
4. If regulations relative to retention of breath samples for referee analysis are needed for any reason, then new regulations should be written specifically for this application, including such performance standards as the number of replicates, storage, stability, etc.

As was covered in the foregoing

deliberations of the Ad Hoc Committee, remote collection of breath alcohol samples for later analysis was placed into the regulations to answer a specific problem which was postulated at one time; namely, the practical problem which could result from an officer's making an arrest at a location which was remote from an installed breath testing instrument. All the conditions set forth in the regulations for remote collection and later analysis were developed for this specific application and not for another application, such as referee analysis. Referee analysis is analysis by the defendant of remaining sample, when sufficient sample remains [Section 1219.1(g), Section 1219.1(g)(2), Section 1219.2(c), and Section 1210.2(c)(1)].

The concept of a need for referee analysis of breath samples was discussed from the point of view of the defense.

Aside from meeting the needs of law enforcement, the purpose of the statute and the regulations is to obtain justice. This is accomplished by securing accuracy which is verifiable. A retained sample for breath would match the retained samples for blood and urine. Actions occurring currently in some California courts have resulted in suppression of breath testing results in drunk driving cases because of judgments that a breath sample should have been retained for referee analysis. These cases are expected to receive review in California's appellate courts. Mr. Erwin reported that the concept of breath sample retention for referee analysis has been supported by court decisions in Alaska, Colorado and Arizona and that Dr. Kurt Dubowski of the University of Oklahoma testified in its favor.

Detailed discussion of the proposition that there is no scientific need to retain a breath sample for referee analysis brought out the following points. This proposition is reflected in the regulations. The regulations recognize a difference between blood and urine testing, on the one hand, and breath testing (i.e., "immediate analysis"), on the other hand. There are two different requirements with regard to the technical ability of the persons who perform the tests. There is a scientific basis for this. When a blood test is performed, there is much manipulation: a person has to take a sample from a blood tube, has to measure it, has to carry it to the testing system, has to do a series of steps on the sample, has to perform a calculation, and has to record the result. At each one of these steps, with all of this

manipulation, there is a possibility of human error. Therefore, there can exist here a rationale for retesting the blood sample because the referee can then determine whether in all of this manipulation some error was made. Similar considerations are applicable to urine tests. However, breath testing is different, and this difference is recognized in the regulations. The statute, too, recognizes differences by setting distinct authorizations for forensic alcohol analysis of blood and urine (Section 436.51) and breath alcohol analysis (Section 436.52). What makes breath testing different from blood or urine testing is the following. First, the instrument on which the immediate analysis is performed is one which has been evaluated and found to meet the required performance standards. From the periodic determinations of

accuracy there is current evidence with regard to the accuracy of that individual instrument. There is no human manipulation associated with the test: the subject's mouth is on the instrument, the subject breathes directly into the instrument, the instrument collects the appropriate breath sample, the instrument does the analysis without any manipulation by the operator (this is the reason for technically untrained officers being permitted to perform breath tests [Section 1221.1(b)(1)]), the result is calculated by the instrument and the test result is recorded in printed form by the instrument. Adding to this the fact that California requires the analysis of two separate breath samples which cannot differ from each other by more than 0.02 grams percent, there is no scientific need to retain a breath sample because there is no room for undetected error.

A defense concern was expressed over the possibility that test records can be switched to make a person appear to have elevated test results. However, this concern can be resolved by some corrective regulation such as serially numbering test records. Also, there was recognition that, if the arrested person wants a referee analysis, Section 13353(f) of the Vehicle Code already makes provision for this by permitting the person to have an additional test of the person's own choosing. A person's choice of a separate blood test for referee analysis would be a better verification of the accuracy of the breath test than trying to retain a breath sample. In a discussion related to this topic, it was noted that the concept of "referee" analysis implicitly assumes a qualified referee. Although law enforcement agencies must perform

alcohol analysis in forensic laboratories licensed for this purpose by the Department of Health Services (Section 436.51), no similar requirement is imposed upon defense of "referee" analysis, and it is doubtful that the Department has any authority to regulate "referee" analysis. This limitation would make it difficult for the Department to establish scientifically suitable criteria for collection and retention of "referee" breath samples.

Referring back to its foregoing discussion on remote collection of breath alcohol samples for later analysis, the Ad Hoc committee made a series of connected recommendations to the Advisory Committee on Alcohol Determination:

- (1) a deletion of the provisions for remote collection of breath alcohol samples for later analysis;

- (2) the retention, in a "grand-father clause", of the ability of San Bernardino County to continue its presently approved use of the field crimper-indium tube system in its geographically remote stations;
- (3) an affirmative declaration in the regulations that there is no scientific need or reason to retain breath samples for referee analysis;
- (4) a recognition that the retention of a breath sample for referee analysis, in addition to being scientifically unnecessary, can produce confusion inasmuch as the two tests, the immediate analysis and the referee analysis, are not equivalent (after the immediate analysis

- of a breath sample, an attempt is made to transfer it from the instrument by some form of manipulation into a device for retention; the remaining sample is then tested in a completely separate instrument which has its own variability; and, unlike a loss of blood or urine sample where spilling or loss is verifiable, loss of an air sample is not verifiable); and
- (5) the need to develop new regulations specific for retention of breath samples for referee analysis if it should happen that, even though the scientific need for this does not exist, the courts should rule that breath samples must be retained.

The Ad Hoc Committee also recognized

that there is presently no reliable and practical way to retain a breath sample for referee analysis inasmuch as there is no sample capturing device which can meet the performance standards with respect to: air blank, calibration with a standard solution, and quality control with a reference sample. In the immediate analysis of a breath sample, the validity of the particular instrument used to test a person can be established. An air blank run on that instrument just prior to the time the person is tested establishes that the instrument is free of alcohol or other volatile substance which would cause an inaccurate test. That instrument is calibrated and its accuracy is determined by running through it the vapors from standard solutions of alcohol. All of this is done on the same instrument on which the person is

tested. However, this is not possible with any of the systems which are proposed for sample for referee analysis. Taking the silica gel tube as an example, it is impossible to run an air blank just prior to a person's test on the same silica gel tube with which the person is tested in order to determine whether it is free of alcohol or other contaminants. Also, unlike an instrument for immediate analysis, it is impossible to calibrate or determine the accuracy of the same silica gel tube with which the person is tested. The court will not know whether the silica gel in that tube was packed properly, whether the silica gel granules were the correct size, or whether there is "channeling" in the gel which would falsely reduce the test result. The accuracy of the silica gel tube on which a person is tested cannot be subjected to periodic determinations of accuracy, as

is done with an instrument for immediate analysis in order to discover any deterioration of performance ability.

If the Advisory Committee on Alcohol Determination were to decide that, scientific necessity aside, there exists a need to retain breath samples for later analysis, then there would have to be a consideration given to the development of regulations which would take these facts into account. For example, there would have to be a performance standard relative to the type of random testing given a manufacturing lot of silica gel tubes (or other breath sample capturing device) in order to establish the reliability of each individual silica gel tube. In light of the foregoing discussion, a discrepancy between the test result of an immediate analysis and a test result of referee analysis on a

captured sample could have nothing to do in fact with the accuracy of the immediate analysis and could instead represent a defect in the captured sample of its analysis. In this case, there would be no way to go back to verify the accuracy of that silica gel tube.

While there was consensus in the Ad Hoc Committee concerning the recommendations listed in the foregoing and the reasons for these recommendations, there continued to be expressed a concern that these actions not adversely affect the practice in San Bernardino County where the field crimper-indium tube system is used for remote collection of breath samples in the manner originally intended; that is, at stations some 200 miles away from a site at which a breath testing instrument is installed. There was also concern that a "grandfather" provision allowing

San Bernardino County to continue its present practice, would appear contradictory to the Ad Hoc Committee's recommendation that capture devices are unreliable. This resulted in a restatement by the Ad Hoc Committee that such an apparent conflict is the result of mixing the concept of remote capture with the concept of referee analysis. The present regulations contain performance standards, including a stability standard, which are specific for the one application; that is, remote capture of breath alcohol samples for later analysis. All the applicable standards of performance and procedure in the present regulations are those which the Advisory Committee on Alcohol Determination judged to be adequate in 1975 when remote collection was the intended use. A continued use of the field crimper-indium tube system for

this purpose by San Bernardino County would remain consistent with the regulations and adequate for purposes of traffic law enforcement.

However, the issue here is a use of such capturing systems, not for remote collection but for referee analysis. In the latter application, the purpose of referee analysis is to compare its test result to the test result obtained with a breath testing instrument. If the two disagree, doubt will be ascribed to the immediate analysis. And yet, the disagreement could be the fact that the capture was contaminated with alcohol, or that it leaked, or that it failed to collect an adequate sample, or that storage conditions caused to deteriorate. And, whereas the instrument for immediate analysis has records to support its accuracy and the instrument for immediate analysis can be subpoenaed for checking,

no like evidence can be gained from the capture device. An important consideration is the scientifically reasonable expectation that the probable direction of error in capturing systems is that the test results of referee analysis will be lower than the test results of immediate analysis, because of the types of errors and losses that can occur when trying to retain a breath sample or when trying to test a captured sample.

CERTIFICATE OF SERVICE BY MAIL

CHARLES R. B. KIRK, a member of the Bar of the United States Supreme Court, hereby certifies that on January 4, 1984, a copy of the annexed Reply to Respondents' Brief Opposing Certiorari was served by mail upon the counsel of record for each of the parties respondent by depositing a copy in the United States Mail at the United States Post Office in

San Francisco, California, with first-class postage prepaid, and properly addressed as follows:

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